IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7427 of 2013
and MP.Nos.1 & 2 of 2013

T.Retnapandian
.. Petitioner

Vs.

1.Tamil Nadu Cements Corporation Limited,
Rep. by its Chairman cum Managing Director,
LLA Building,
No.735, Anna Salai,
Chennai 600 002.

2. Deputy General Manager, (Personnel & Administration),
Tamil Nadu Cements Corporation Limited,
LLA Building,
No.735, Anna Salai,
Chennai 600 002.

3. Mr.V.Balaraman,
Enquiry Officer,
U 53(11)4th main road,
Anna Nagar, Chennai 600 040.
.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of declaration, directing the order of the 2nd respondent dated 02.05.2012 bearing R.C.No.666/A1/2012 as illegal, arbitrary and without jurisdiction and consequently direct the 1st and 2nd respondents to close the proceedings against the petitioner initiated in respect of charge memo dated 14.07.2004 bearing R.C.No.7615/A1/2004 and settle all the terminal benefits of the petitioner along with interest at the rate of 10% per annum.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.A.Sivaji (for R1 & R2)

O R D E R

This impugned writ petition is filed for a Writ of Declaration, directing the order of the 2nd respondent dated 02.05.2012 bearing R.C.No.666/A1/2012 as illegal, arbitrary and without jurisdiction and consequently direct the 1st and 2nd respondents to close the proceedings against the petitioner initiated in respect of charge memo dated 14.07.2004 bearing R.C.No.7615/A1/2004 and settle all the terminal benefits of the petitioner along with interest at the rate of 10% per annum.

2. The petitioner T.Retnapandian joined the respondent Tamil Nadu Corporation Cements Corporation Limited (herein referred to as Corporation) as Junior Assistant in the year 1981.He was promoted as Assistant from 01.11.1986 and further promoted to the post of Superintendent on 01.11.1992. The petitioner was placed under suspension by order dated 06.02.1999. The Directorate of Vigilance and Anti-Corruption (DVAC) initiated criminal proceedings against the petitioner and his wife on the ground of asset disproportionate to the known source of income under C.C.No.12 of 2002 on the file of VI Additional Judge, City Court, Chennai.

3. The petitioner was served with a charge memo dated 14.07.2004, on the ground that while working in the Corporation between 01.01.1990 to 12.01.1999, he had been carrying business of building construction in the name and style "Karthik Construction". The business was run by the petitioner's wife Mrs.Gandhimathi. The charge was framed for a conduct which was in violation of Rule 5.2(v) of the Service Rules of the Tamil Nadu Cements Corporation Limited, which reads as under:-

> "Taking stock ships/Forwarding Agencies in the name of family members or in benami name or carrying out any money lending or any other private business, trade or occupation"

4. The petitioner states that Karthik construction is a partnership firm and his wife is one of the partner and therefore, Rule 5.2(v) is not applicable. The petitioner filed a Writ Petition No.23132 of 2004, challenging the charge memo dated 04.07.2004 and for a direction not to proceed with the departmental proceedings pending criminal proceedings. The petitioner states that the criminal trial in C.C.No.12 of 2002 on the file of VI Additional Judge, City Court, Chennai, ended in acquittal. Same has been challenged in appeal in this Court and the appeal is pending. Writ Petition No.23132 of 2004 was disposed of, permitting the respondents to proceed ahead with the departmental proceedings in pursuant to the charge memo after giving adequate opportunity to the petitioner.

5. The petitioner states that he attained the age of superannuation on 30.04.2011, but, on 29.04.2011, the petitioner was retained in service in accordance with Rule2.22 (b) of the Tamil Nadu Cements Corporation Limited Service Rules. The letter dated 29.04.2011, reads as under:-

"Proceedings

Lr.No.1792/A1/2011 Dated 29.04.2011

Sub: TANCEM - Thiru T.Retnapandian, Supdt. (under suspension),
Corporate office - Superannuation - Reg.
Read: Connected records.

Order:
The services of Thiru. Thiru T.Retnapandian, Supdt. (under suspension), Corporate office are retained beyond the date of his superannuation on 30.04.2011 in view of the pending Criminal Appeal and Departmental enquiry.

DY.GENERAL MANAGER (PER&ADMN.)"

6. The petitioner has received a communication from the Dy.General Manager (Per & Admn.), Tamil Nadu Cements Corporation Limited, appointing an Enquiry Officer to conduct the domestic enquiry in respect of the charge memo issued to the petitioner. The petitioner states that the initiation of the enquiry proceedings after superannuation is bad in law. The petitioner states that since the petitioner retained in service for period of six months and that domestic enquiry cannot be permitted to conduct beyond six months from the date of superannuation under Rule 2.22(b) of the Tamil Nadu Cements Corporation Limited Service Rules. The petitioner states that the proceeding have not been concluded within the time stipulated under the Rules and therefore the enquiry has to be closed.

7. The respondents have not filed the counter. However, they have filed a written arguments. The respondents states that an individual who was retained in service beyond the date of retirement for the purpose of domestic enquiry and placed under suspension is to be paid subsistence allowance at the rates as provided in the Service Rules till the completion of domestic enquiry or for a period of six months whichever occurs earlier. The subsistence allowance has been paid for the period of six months and therefore there is no infraction on Rule 2.22(b).

8. Heard the counsel for the parties.

9. The issue that arises for consideration is as to whether the departmental proceedings can proceed beyond the period of six months, in case of departmental proceedings initiated against the persons attained the age of superannuation. The petitioner by this writ petition is challenging the charge memo dated 14.07.2004 and the order of appointing Enquiry Officer dated 02.05.2012.

10. It is well settled that no Writ lies against a charge sheet or a show-cause notice (refer Union of India Vs. Kunisetty Satyanarayana reported in 2006 (12) SCC 28, Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh & Ors, reported in 1996 (1) SCC 327, Special Director & Another Vs. Mohd.Ghulam Ghouse & Another, reported in 2004 (3) SCC 440, Ulagappa & Ors. Vs. Divisional Commissioner, Mysore & Ors., reported in 2001 (10) SCC 639 and State of UP Vs. Brahm Datt Sharma & Ors., reported in 1987 (2) SCC 179). All the judgments would show that the reason why the ordinarily a Writ Petition should not be entertained against a mere show-cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or a show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is well known that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may dropped the proceeding by holding the charges are not established. It is well settled that a writ petition lies when some right of the party is infringed. A mere show-cause notice or charge-sheet or appointing of Enquiry Officer does not infringe the right of any person. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance. It is also well settled that there is some rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice or order of appointing Enquiry Officer, if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

11. Rule 2.22(B) of Tamil Nadu Cements Corporation Limited Service Rules, which is the Rule in issue reads as under:-

> "i. Notwithstanding anything contained in sub clause 2.22(a), the Management can retain an employee beyond the date of retirement if the individual is on suspension due to the pendency of disciplinary proceedings and the Disciplinary Authority is of the view that it will result in awarding major punishment of either dismissal or removal from service.
>
> ii. In all other cases, the individual shall be allowed to retire on the date of retirement without prejudice to the disciplinary action pending against him.
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> iii. The individual who is retained in service, beyond the date of retirement, for the purpose of disciplinary action and placed under suspension shall be paid subsistence allowance at the rates as provided in the Service Rules till the completion of disciplinary proceedings or for a period of six months

whichever occurs earlier.

iv. The individual shall not be eligible to claim any other benefits during such suspension period. The disciplinary proceedings must be completed within a period of six months positively."

12. A perusal of Sub-rule 3 would show that the person who has retained in service beyond the date of retirement for the period of disciplinary action and placed under suspension has to be paid subsistence allowance as provided in the Service Rules till the completion of departmental enquiry or the period of six months, whichever occurs earlier. However, the last sentence of the Rule (IV) states that the departmental proceedings must be completed within a period of six months positively. The contention of the learned counsel for the petitioner is that the said Rule is mandatory and the departmental proceedings must be concluded within a period of six months positively and that no continuity beyond the period of six months.

13. Rule 2.22(B) of Tamil Nadu Cements Corporation Limited Service Rules, deals with an individual who is on suspension and he is about to attain the age of superannuation. The said Rule permits the management to retain the employee beyond the date of retirement, if the departmental authority would of the view that the departmental proceedings will result in awarding major punishment of dismissal or removal from service. Sub clause 3 of the said Rule states that the subsistence allowance must be paid for six months. It is also postulates that if the enquiry is completed prior to six months, then the subsistence allowance need not to be paid beyond the period of enquiry. If this Rules is held to be mandatory, then any employee facing departmental proceedings can take advantage of dilatory tactics delaying the enquiry beyond six months and frustrate the entire departmental proceedings. Such could never having the intention of the Rule making authority. Therefore the Rule making authority only has emphasized on the time factor by urging that the departmental proceedings in such cases should ordinarily be concluded within six months period. The time limit in Rule 2.22(b) are permits the employer to retain the employee in service even after the period of superannuation to continue the departmental proceedings has to be held only directory and not mandatory. Any other interpretation would frustrate the effective functioning of Rule 2.22(b) of Tamil Nadu Cements Corporation Limited Service Rules. If the employer resort to directory tactics to cause unnecessary hardship, it is always to the employee to demonstrate to a Court, the mischief committed by the employer and it is open to the Court to exercise its jurisdiction under Article 226 of the Constitution of India, to give appropriate relief to such an employee.

14. In State of Haryana v. Raghubir Dayal [(1995) 1 SCC 133] the Hon'ble Supreme Court has observed as under:

> '5. The use of the word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word "shall" prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word "shall", therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word "shall" as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory.

15. Similarly, the Hon'ble Supreme Court in Delhi Airtech Services (P) Ltd. v. State of U.P., (2011) 9 SCC 354, has observed as under:

> "122. The distinction between mandatory and directory provisions is a well-accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word "shall" would be read as "must" unless it was essential to read it as "may" to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word "shall" is used in a substantive statute, it normally would indicate mandatory intent of the legislature.
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> 123.Crawford on Statutory Construction has specifically stated that language of the provision is not the sole criterion; but the courts should consider its nature, design and the consequences which could flow from construing it one way or the other.
>
> 124. Thus, the word "shall" would normally be mandatory while the word "may" would be directory. Consequences of non-compliance would also be a relevant consideration. The word "shall" raises a presumption that the particular provision is imperative but this prima facie

inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.”

16. This Rule cannot be interpreted to mean that no enquiry can proceed beyond six months under Rule 2.22(b). Such an interpretation as stated earlier would defeat the very purpose of Rule 2.22(b). A literal interpretation of Rule 2.22(b) would be counter protective and a purposive interpretation has to be given to Rule 2.22(b) to ensure that the delinquent employee who is facing departmental proceedings and is likely to be given a major punishment of dismissal or removal from service. Rule 2.22 (b) clause is therefore to be only construed as directory and not mandatory.

17. In the result, Writ Petition is dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Pkn.
To
1.The Chairman cum Managing Director,
Tamil Nadu Cements Corporation Limited,
LLA Building,
No.735, Anna Salai,
Chennai 600 002.

2. Deputy General Manager, (Personnel & Administration),
Tamil Nadu Cements Corporation Limited,
LLA Building,
No.735, Anna Salai,
Chennai 600 002.

+1 CC to M/s. Balan Haridas, Advocate sr 88579.

RSI(CO)
SP(25/11/2019)